

United States Bankruptcy Court
for the District of Oregon

Frank R. Alley, III, Judge
Barbara D. Ivey, Judicial Assistant
Lee D. Brice, Law Clerk



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October 22, 2009

Mr. Gary U. Scharff
621 SW Morrison St., #1300
Portland, OR 97205

Mr. Ronald Becker
Office of the U.S. Trustee
405 East 8th Avenue, Suite 1100
Eugene, OR 97401

RE: Case No. 09-63863-fra11 JEFFREY & KIMBERLY FISCUS

Dear Counsel:

I have reviewed Mr. Scharff's application seeking security for his fees as counsel for the debtors-in-possession. Mr. Scharff's employment has previously been approved: the remaining question is security of his fees. He requests that he be permitted to accept what amounts to a guaranty from 4 LC, LLC, a limited liability corporation wholly owned by the debtors-in-possession. The LLC would pledge a third security position in real property of which it is the sole owner.

I do not believe that allowing this arrangement violates any principles of the Bankruptcy Code, including the requirement that the debtor-in-possession's professionals be disinterested. Nor do I believe there is any material distinction between securing payment of fees by retainer or guaranty prior to the petition, and securing it post-petition from a third party.

The proposal is that the fees be secured up to \$50,000 by way of a promissory note and third trust deed in the subject property. The proposal is approved, on the following conditions:

1. The promissory note is to be replaced by an appropriate form of guaranty, noting that the guaranty by the LLC extends to \$50,000 in total attorney's fees. It may be secured by the real property identified by the LLC.

2. The LLC shall file with the Court, with a copy to the U.S. Trustee, a recent appraisal of the subject property, and a recent balance sheet. The Court's approval of the security arrangement is expressly conditioned on the representation made to the Court that there is

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sufficient equity in the subject property to cover the guaranty, and that the potential debt will not render the LLC insolvent.

3. As always, the fees of the debtor-in-possession's attorney is subject to Court review in all respects.

Very truly yours,

A handwritten signature in black ink, appearing to read "F. Alley", with a stylized flourish at the end.

FRANK R. ALLEY
Bankruptcy Judge

FRA:bdi

cc: A.L. & Marilyn Bruner, 607 Avenue DeTeresa, Grants Pass, OR 97526